

An Act Promoting Affordable Housing and Community Planning in the Commonwealth

SECTION 1. Section 15 of chapter 19, of the General Laws, as appearing in the 2002

Official Edition, is hereby amended by adding the following clause:-

(k) to collect and maintain information on the number of group home units in each community and report such information, including the location of such group home units, to the department of housing and community development on an annual basis. Such location shall be held by the department of housing and community development subject to chapter 66A.

SECTION 2. clause (b) of section 15 of chapter 19B of the General Laws, as so appearing, is hereby amended by adding the following sentence:-

The department of mental retardation shall report the number of group home units in each city or town on an annual basis to the department of housing and community development. The department of mental retardation shall also report the location of such group homes to the department of housing and community development. Such location shall be held by the department of housing and community development subject to chapter 66A.

SECTION 3. The second paragraph of section 3 of chapter 23B of the General Laws, as so appearing, is hereby amended by adding the following clause:-

(w) count the number of low or moderate income housing units, as defined by chapter 40B and the accompanying department of housing and community development regulations, in each city or town in the commonwealth on a biennial basis.

SECTION 4. Section 20 of chapter 40B of the General Laws is hereby amended by striking out section 20, as so appearing, and inserting in place thereof the following section:

Section 20 – Definitions

The following words, wherever used in this section and in sections 20A to 23, inclusive, shall, unless a different meaning clearly appears from the context, have the following meanings:-

“Affordable Housing Threshold”, each city or town shall have a minimum affordable housing threshold such that at least 10 percent of year round housing units meet the requirements for inclusion on the subsidized housing inventory in a manner consistent with sections 20 through 23 of this chapter.

“Committee”, the housing appeals committee.

“Consistent with local needs”, shall have the meaning set forth in section 20A.

“Department”, the department of housing and community development.

“Family”, two or more persons who live or will live regularly in a unit as their primary residence whose income and resources are available to meet the family’s needs and who are either related by blood, marriage, operation of law or who have otherwise evidenced an inter-dependent relationship.

“Group Home Units”, community housing units or beds serving clients of the department of mental retardation or the department of mental health which are located in a non-institutional setting. Each such unit shall serve 1 client.

“Local Board”, any town or city board of survey, board of health, planning board, conservation commission, building inspector or the officer or board having supervision of

the construction of buildings or the power of enforcing municipal building laws, or city council or board of selectmen or other boards exercising power specified locally.

“Local Program”, a housing program established and administered by a city or town which has been authorized and approved by the department.

“Low or moderate-income households”, individuals or families living in a housing unit with combined incomes no higher than 80 percent of the median income for the metropolitan statistical area, primary metropolitan statistical area, or the county in which the housing unit is located, whichever is lower, as determined by the United States department of housing and urban development or, in the absence of such a determination, by the department.

“Low or moderate-income housing”, any year round housing subsidized by the federal or state government under any program, or subsidized by a local government under a local program authorized and approved by the department, to produce housing which serves low or moderate-income households as defined in this chapter.

“Subsidy”, the provision of: direct financial assistance; indirect financial assistance including insurance, guarantees, or other means; in kind assistance; technical assistance; or of other supportive services through a federal, state or local housing program to assist the construction of low or moderate-income housing.

“Subsidizing Agency”, any agency or entity of state, federal or local government which subsidizes the construction or substantial rehabilitation of low or moderate-income housing and any housing authority acting pursuant to section 26(m) of chapter 121B.

“Uneconomic”, any condition brought about by any single factor or combination of factors to the extent that such condition makes it impossible for a public agency or

nonprofit organization to proceed in building or operating low or moderate income housing without financial loss, or for a limited dividend organization to proceed and still realize a reasonable return in building or operating such housing within the limitations set by the subsidizing agency on the size or character of the development or on the amount or nature of the subsidy or on the tenants, rentals and income permissible, and without substantially changing the rent levels and units sizes proposed by the public, nonprofit or limited dividend organizations.

SECTION 5. Said chapter is hereby further amended by inserting after section 20, the following new section:-

Section 20A. Consistent with local needs.

Decisions and requirements by the zoning board of appeals shall be considered consistent with local needs if they are reasonable in view of the regional need for low or moderate income housing considered with the number of low and moderate income persons in the city or town affected and the need to protect the health or safety of the occupants of the proposed housing or of the residents of the city or town, to promote better site and building design in relation to the surroundings, or to preserve open spaces, and if such decisions and requirements are applied as equally as possible to both subsidized and unsubsidized housing. Decisions and requirements shall also be deemed consistent with local needs when imposed by a board of zoning appeals after comprehensive hearing in a city or town where:

- (1) Low or moderate-income housing exists which is at least 10 per cent of the housing units reported in the most recent federal decennial census of the city or town;

(2) The development is large scale for the city or town in which it is proposed. A proposed development shall be large scale if:

- a. in a city or town which has a total number of 7,500 or more housing units as enumerated in the most recent federal decennial census, the application for a comprehensive permit involves construction of more than 300 housing units or a number of housing units equal to or greater than 2 percent of all housing units in the city or town, whichever number is greater; or
- b. in a city or town which has between 5,000 and 7,500 housing units exclusive, as so enumerated, the application for a comprehensive permit involves construction of more than 250 housing units; or
- c. in a city or town which has between 2,500 and 5,000 housing units inclusive, as so enumerated, the application for a comprehensive permit involves construction of more than 200 housing units; or
- d. in a city or town which has less than 2,500 housing units, as so enumerated, the application for a comprehensive permit involves construction of more than 150 housing units; or

(3) The city or town has made recent progress toward attaining its affordable housing threshold. Recent progress toward its affordable housing threshold shall mean that the number of housing units that have been created during the twelve months prior to the date of the comprehensive permit application and that are eligible to be included on the subsidized housing inventory equal to or greater than 2 percent of the city or town's total housing units as enumerated in the most recent federal decennial census; or

(4) 12 months has not elapsed between the date of application for a comprehensive permit and the date of the most recent pendency of a prior application for a variance, special permit, subdivision or other approval related to construction on the same land if that prior application included no provision for low or moderate income housing, provided that any such application shall not be considered a prior application if it concerns only insubstantial changes to an existing use;

(5) the city or town has adopted an affordable housing plan approved by the department pursuant to which there is an increase in its number of low or moderate-income housing units eligible for inclusion on the subsidized housing inventory by at least one-half of 1 percent of total units every calendar year until housing needs are met pursuant to this chapter, subject to paragraphs (a) and (b) below.

a. The affordable housing plan shall be based upon a comprehensive housing needs assessment, which shall include an analysis of the most recent federal decennial census data of the city or town's demographics and housing stock, development constraints as well as of the city or town's ability to mitigate them, and the city or town's infrastructure.

b. The affordable housing plan shall address the matters set out in guidelines adopted by the department, including:

i. a mix of housing, such as rental and homeownership opportunities for families, individuals, persons with disabilities or special needs,

and the elderly that are consistent with local needs and feasible within the housing market in which they will be situated;

- ii. the strategy by which the city or town will achieve its housing goals based upon its comprehensive needs assessment;
- iii. the characteristics of projects the city or town prefers that are consistent with the guidelines established by the department for smart growth and development including, but not limited to, redevelopment and adaptive reuse, cluster housing, higher-density housing, transit or pedestrian-oriented development which provides access to jobs and services, resource efficient buildings, and development in locations with existing infrastructure;
- iv. a description of the use restrictions which shall be imposed on low- or moderate-income housing units to ensure that each unit will remain affordable to and occupied by low or moderate-income households;
- v. the identification of zoning districts or geographic areas which permit residential uses which the city or town proposes to modify or has created for the purposes of low or moderate-income housing developments;
- vi. the identification of specific sites or characteristics of sites for which the city or town will encourage the filing of comprehensive permit applications pursuant to section 21 of this chapter; and

vii. city or town owned parcels, if any, for which the city or town commits to issue requests for proposals to develop low or moderate-income housing.

c. Upon submission to the department, the plan shall also be submitted to the regional planning district established pursuant to this chapter or the cape cod commission established pursuant to section 18 of chapter 716 of the laws of 1989 as amended, or the martha's vineyard commission established pursuant to chapter 831 of the laws of 1977, within such district or commission area such project is located or any other regional planning district hereafter established by the general court, which shall have 30 days to comment to the department on the implications of the plan for housing need, growth and development concerns, and other relevant matters. Within 90 days after its submission to the department by a city or town's chief executive officer, the department shall approve the plan if it meets the requirements specified herein, otherwise, it shall disapprove the plan. The department shall notify the city or town of its decision to either approve or disapprove a plan in writing. If the department disapproves a plan, the notification shall include a statement of reasons for the disapproval. A city or town that originally submitted a plan that had been disapproved may submit a new or revised plan to the department at any time. A city or town may amend its plan from time to time if the department approves the amendment. If the department fails to mail notice of approval or disapproval of a plan or plan amendment within 90 days after its receipt, the plan or plan amendment shall be deemed to be approved.

d. The department shall certify annually whether a city or town is in compliance with an approved plan. The department shall determine whether a city or town is in compliance within 30 days of receipt of a city or town's request for such a certification. A city or town shall be in compliance if it has reached the benchmarks established in its approved plan and has made all changes necessary to accommodate future planned development. If the department determines the city or town is in compliance with its plan, the certification shall be retroactive to the date the certification was requested. Provided further if a city or town fails to achieve the goals established in the approved plan and as documented on the subsidized housing inventory the city or town shall not be in compliance with its plan and shall submit a new plan for certification by the department.

e. Units which were created and which became eligible to be counted toward a city or town's affordable housing threshold between August 1, 2002 and December 31, 2002 shall be credited toward the city or town's affordable housing threshold for the first year of planned production under an approved affordable housing plan, regardless of the date the plan is submitted to or certified by the department. An approved plan shall take effect for the purpose of the definition of consistent with local needs in this section only when the department certifies that the city or town has approved permits resulting in an initial annual increase in its low-or moderate-income housing units of at least one-half of 1 percent of total housing units in accordance with its plan. It is the responsibility of the city or town to request such certification from the

department. Once the department has made such a certification of initial compliance and subsequent annual certifications of compliance:

1. The board may, in its discretion, deny, or approve with conditions, any comprehensive permit applications for the period of one year from any certification, and such denial or approval with conditions shall be deemed consistent with local needs; or, alternatively,
2. The board may, in its discretion, deny or approve with conditions any comprehensive permit applications for the period of 2 years from any certification, if, in the year it was certified, the city or town has increased its low or moderate-income housing stock by at least 1 percent of total housing units in a manner consistent with the plan, or alternatively,
3. The board may, in its discretion, deny, or approve with conditions, any comprehensive permit applications for the period of 3 years from any certification, if, in the year it was certified, the city or town has increased its low or moderate-income housing stock by at least 1½ percent of total housing units in a manner consistent with the plan; or

(6) the board has approved 3 or more comprehensive permits, at least 3 of which contain 20 or more housing units each within 12 months preceding the filing of an application for a comprehensive permit and those permits have become final.

SECTION 6. Said chapter is hereby further amended by inserting after section 20, the following new section:-

Section 20B. Local determination of affordable housing threshold.

(a) Comprehensive permit requirements.

(1) To be eligible to submit an application for a comprehensive permit or to file or maintain an appeal before the committee, the applicant and the project shall fulfill the following jurisdictional requirements:

(i) The applicant shall be a public agency, a non-profit organization, or a limited dividend organization. An applicant shall satisfy the limited dividend organization requirement if the comprehensive permit contains a condition that the owner of the project execute a regulatory agreement with a subsidizing agency which limits the owner's return on building or operating the project to the amounts set by the subsidizing agency or program. Such regulatory agreement shall be recorded or filed prior to the beginning of construction of the land records with the registry of deeds or land court in the registry district or district office of the land court in which the project is located.

(ii) The project shall be fundable by a subsidizing agency under a low and moderate-income housing subsidy program.

(iii) The applicant shall control the site.

- (iv) The proposed development shall contain no less than 25 percent of its total housing units as units affordable to low or moderate income households, or in the alternative a proposed development may contain no less than 20 percent of its total housing units as affordable to households whose income does not exceed 50 percent of the area median income.

Provided further the inclusion of commercial, recreational or other land uses which are in conjunction with the housing development shall not preclude eligibility.

- (2) Fundability shall be established by submission of a written determination of project eligibility by a subsidizing agency as follows:

- (i) A determination of project eligibility shall include:

- A. the name and address of the applicant;
- B. the address of the site and site description;
- C. the number and type (homeownership or rental) of housing units proposed;
- D. the name of the housing program or programs under which project eligibility is sought; and
- E. relevant details of the particular project if not mandated by the housing program, including the percentage of units for low or moderate income households, income eligibility standards, the duration of use restrictions requiring occupancy by low or moderate income households, and the limited dividend status of the developer;

(ii) A determination of project eligibility shall make the following findings:

- A. that the proposed project appears generally eligible under the requirements of the housing program or programs, subject to final review of eligibility and to final approval;
- B. that the subsidizing agency has performed an on-site inspection of the site and has reviewed pertinent information submitted by the applicant;
- C. that the proposed housing design and density are generally appropriate for the site on which it is located, taking into account surrounding land uses, proximity to transportation, services and public utilities, and design to minimize land use impacts;
- D. that the proposed project appears financially feasible within the housing market in which it will be situated, based on comparable rentals or sales figures;
- E. that an initial *pro forma* has been reviewed and the project appears financially feasible on the basis of estimated development costs; and
- F. that the developer of the proposed project meets the general eligibility standards of the housing program or programs.

(iii) In addition to the foregoing, a subsidizing agency shall consider the following in making a determination of project eligibility: overall density and size; environmental impact, including watersheds and existing land uses; consistency with principles of smart growth; impact on

historical resources; the impact of other pending applications for housing development; and other local concerns of the city or town where the project is located.

(iv) Within 10 days of filing of its application for a determination of project eligibility with a subsidizing agency for preliminary approval of a project, the applicant shall serve written notice upon the director of the department.

(v) Within 10 days of filing the application for a determination of project eligibility the applicant shall provide written notice and a copy of such application to the chief executive officer of the involved city or town and to the members of the general court representing such city or town. The applicant shall also provide written notice of the application to the planning board, board of health, conservation commission, water and sewer district, fire and police.. Within 30 days after such notice, the chief executive officer or designee of the chief executive officer may schedule and hold a meeting at a location within the involved city or town. The meeting shall be chaired by the city or town's chief executive officer or designee and shall be attended by the applicant or its representative. Representatives from local boards are encouraged to attend the meeting and provide written comment. The purpose of the meeting is to allow the applicant and the city or town representatives to informally discuss the preliminary proposal so that the parties involved can develop an understanding of the proposal and to respond to concerns raised in an effort to achieve an outcome that meets the needs of the involved city or

town as well as the applicant. In addition, a representative from a public or quasi-public housing agency, or a regional planning agency within the regional planning district or its designee knowledgeable with respect to chapter 40B may provide technical assistance on topics including, but not limited to, site design and density, open space, marketing, use restrictions, allowable costs and profit limitations. Following the close of the meeting, the chief executive officer of the city or town, local boards, and the regional planning district may issue written comments within 14 days to the subsidizing agency.

(vi) Within 10 days of receipt of a written determination of project eligibility from the subsidizing agency, the applicant shall serve a copy of that determination upon the director of the department.

(vii) An applicant which has obtained a determination of project eligibility shall be presumed to be eligible to submit an application for comprehensive permit or to file or maintain an appeal before the committee. Nothing set forth in this section 20B shall be deemed to confer upon any city or town, or any of its boards, committees, commissions or officials, or upon any other person the right to appeal or judicial review in any form the determination of project eligibility by the subsidizing agency, it being intended that the rights of appeal conferred by sections 21 and 22 of this chapter shall be the exclusive remedy for any party aggrieved by the issuance or denial of any comprehensive permit hereunder.

(viii) If project funding is provided through a non-governmental entity, a public or quasi-public entity authorized by the department shall make the determination of project eligibility. The designated entity that issued the project eligibility determination shall administer the project thereafter as specified in program guidelines issued by the department.

(3) A showing that the applicant, or any entity 50 percent or more of which is owned by the applicant, owns a 50 percent or greater interest, legal or equitable, in the proposed site, or holds any option or contract to purchase the proposed site, shall be considered by the board or the housing appeals committee to be conclusive evidence of the applicant's interest in the site.

(4) No determination of project eligibility shall be issued for a project sooner than 45 days after the filing of its application with the subsidizing agency for preliminary approval of the project. A determination of project eligibility shall be for a particular financing program or programs. An applicant may proceed under alternative financing programs if the application to the board or appeal to the committee so indicates and if full information concerning the project under the alternative financing arrangements is provided.

(5) Failure of the applicant to fulfill any of the requirements in this section may be raised by the housing appeals committee, the board, or a party at any time, and shall be cause for dismissal of the application or appeal. No application or appeal shall be dismissed, however, unless the applicant has had at least 60 days to remedy the failure.

(b) Local Action Prerequisite to Appeal.

In order to appeal to the committee, an applicant shall have applied to the board for a comprehensive permit in accordance with section 21 of this chapter and shall have been denied such permit or shall have been granted such permit with conditions which it alleges make the building or operation of such housing uneconomic.

(c) Local progress toward affordable housing threshold.

(1) Affordable housing thresholds. A city or town may record progress towards its affordable housing threshold as documented in the subsidized housing inventory in the following manner:

i. Rental Housing Units: (a) If at least 25 percent of housing units within a development are restricted to serve low or moderate-income households, 100 percent of housing units within the development shall be eligible to be included toward the city or town's affordable housing threshold. If fewer than 25 percent of housing units within a development are restricted to serve low or moderate-income households, only those units which serve low or moderate-income households shall be eligible to be included toward the city or town's affordable housing threshold or (b) if at least 20 percent of housing units within a development are restricted to serve households with household income at or below 50 percent of area median income, 100 percent of housing units within the development shall be eligible to be included toward the city or town's affordable housing threshold. If fewer than 25 percent of housing units within a development are restricted to serve low or moderate-income households, only such restricted units shall be eligible to be included toward the city or town's affordable housing threshold;

ii. Homeownership Units: (a) if at least 25 percent of housing units within a development are restricted to serve low or moderate-income households, 2 times the actual number of such restricted units, not to exceed the total number of homeownership

units authorized by the permit shall be included toward the city or town's affordable housing threshold or (b) if at least 20 percent of housing units within a development serve households earning at or below 50 percent of area median income, 2 times the actual number of units serving such households, not to exceed the total number of homeownership units authorized by the permit shall be included toward the city or town's affordable housing threshold. If fewer than 25 percent of housing units within a development are restricted to serve low or moderate-income households, only such units which are restricted to serve low or moderate-income households shall be eligible to be included toward the city or town's affordable housing threshold;

iii. Community Preservation Act Housing Units: any community housing, as defined in chapter 44B which is restricted to occupancy by persons of low or moderate income households, provided further, that such housing payment exclusive of utilities shall not exceed 30 percent of monthly income of a household at or below 80 percent of area median income, adjusted for household size, shall be eligible to be included toward the city or town's affordable housing threshold;

iv. Accessory Apartment Units: any accessory apartment which is approved pursuant to a city or town's ordinance or bylaw and is occupied by persons of low or moderate income, provided further that such rental payment exclusive of utilities shall not exceed 30 percent of monthly income of a household earning at or below 80 percent of area median income, adjusted for household size, shall be eligible to be included toward the city or town's affordable housing threshold. Each such accessory apartment unit shall be subject to a use restriction, which may be revocable upon the sale of the principal residence. Each city or town shall certify annually the number of such accessory apartments within its borders;

v. Group Home Units: all group home units in each city or town as reported annually by the department of mental health and the department of mental retardation to the department shall be eligible to be included toward the city or town's affordable housing threshold;

vi. Local Housing Units: housing units created under a local program or subsidy or which qualify as local initiative units pursuant to regulations promulgated by the department and restricted to serve low or moderate income households as defined in this chapter shall be eligible to be included toward the city or town's affordable housing threshold as documented on the subsidized housing inventory; and

vii. Urban Center Housing Tax Increment Financing Units: low or moderate income housing created pursuant to section 60 of chapter 40 provided further, that such housing payment exclusive of utilities shall not exceed 30 percent of monthly household income of a household earning at or below 80 percent of area median income shall be eligible to be included toward the city or town's affordable housing threshold.

viii. Expiring Use Units: In instances where housing units were developed to serve low or moderate income households and the use restriction has expired as a result of refinancing or operation of law or otherwise, the department shall have the discretion to count such units pursuant to guidelines promulgated by the department toward a city or town's affordable housing threshold as recorded in the subsidized housing inventory.

(d) Subsidized Housing Inventory.

The department shall maintain an inventory of low or moderate income housing units. Such inventory shall be published biennially, provided further that such inventory shall be updated for a specific city or town upon request by such city or town. Housing units authorized by a comprehensive permit or special permit shall be eligible to be

included toward a city or town's affordable housing threshold as recorded on the subsidized housing inventory when the comprehensive permit or special permit becomes final, provided that housing units for which building permits have not been issued within 1 year of the date when the comprehensive permit or special permit became final shall no longer be eligible to be counted toward the city or town's affordable housing threshold until the building permits have been issued. The department may for good cause waive such time requirement. Low or moderate income housing units not authorized pursuant to a comprehensive permit or special permit shall be eligible to be counted toward the city or town's affordable housing threshold when a building or occupancy permit is issued.

SECTION 7. Said chapter is hereby further amended by inserting after section 20, the following section:-

Section 20C. The Massachusetts Housing Partnership Fund board, as established by section 35 of chapter 405 of the acts of 1985, or its designee, shall make technical assistance available to local zoning boards of appeal to assist in their review of applications for comprehensive permits. No subsidizing agency shall issue a determination of project eligibility or site approval unless a fee to defray the costs of such technical assistance program has been collected from the applicant and remitted to the Massachusetts Housing Partnership Fund board in accordance with a fee schedule adopted by the department.

SECTION 8. Said chapter is hereby further amended by inserting after section 20, the following section:-

Section 20D. The department shall promulgate regulations and establish programs, policies, guidelines and necessary fee schedules to implement sections 20 to 23,

inclusive, of this chapter. The department shall make available planning and housing development information and technical assistance to assist cities and towns in reaching their affordable housing threshold as defined in this chapter.

SECTION 9. Section 23 of said chapter 40B, as so appearing, is hereby amended by inserting after the first sentence the following sentence:-

The committee shall receive evidence of and shall consider the following matters: (1) a city or town's master plan, comprehensive plan or community development plan, and (2) the results of the city or town's efforts to implement such plans.

SECTION 10. Notwithstanding any general or special law to the contrary, no application for a comprehensive permit filed pursuant to sections 20 through 23 of chapter 40B before the effective date of this act shall be denied as a result of changes to the General Laws pursuant to this act.

SECTION 11. This act shall take effect on June 30, 2004.